

1 CHRISTINA L. GOEBELSMANN (SBN 273379)

Assistant United States Trustee

2 TREVOR R. FEHR (SBN 316699)

Trial Attorney

3 United States Department of Justice

Office of the United States Trustee

4 450 Golden Gate Avenue, Room 05-0153

San Francisco, California 94102

5 Phone: (415) 705-3333

Facsimile: (415) 705-3379

6 Email: Trevor.fehr@usdoj.gov

7 Attorneys for TRACY HOPE DAVIS

United States Trustee for Region 17

8
9 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA
10 **SAN FRANCISCO DIVISION**

11 In re

) Case No. 24-30074 DM

12 LEGAL RECOVERY LLC,

) Chapter 11

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15 Debtor.
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17 **OBJECTION AND RESERVATION OF RIGHTS OF THE UNITED STATES TRUSTEE**
18 **TO THE APPLICATION TO EMPLOY THE LAW OFFICES OF LEEDS DISSTON AS**
19 **ATTORNEY FOR THE DEBTOR IN POSSESSION (ECF NO. 31)**

19 Tracy Hope Davis, United States Trustee for Region 17 (the "U.S. Trustee"), by and
20 through her undersigned counsel, hereby files this objection and reservation of rights
21 ("Objection") with respect to debtor Legal Recovery, LLC's (the "Debtor") application to employ
22 The Law Offices of Leeds Disston (the "Firm") as Debtor's Counsel (ECF No. 31) (the
23 "Employment Application"). In support of her Objection, the U.S. Trustee respectfully represents
24 as follows:
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1 5. The first meeting of creditors under 11 U.S.C. § 341(a) was scheduled for March
2 4, 2024 but continued to March 19, 2024 after Debtor's Counsel's failed to appear. *Id.* at Docket
3 Entry dated March 5, 2024.

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5 **B. The Employment Application**

6 7. On March 7, 2024, the Debtor filed the Employment Application. *See* ECF No.
7 31. The Employment Application is supported by an Attorney Disclosure Statement. *See* ECF
8 No. 32.

9 8. The Employment Application requests to employ counsel who "has agreed to work
10 on this case without seeking compensation from the Debtor." *See* ECF No. 31, Paragraph 4.

11 9. The Attorney Disclosure Statement states that "[the Firm] will not make any
12 motion for attorney fee in this case" and "[the Firm] has a fee agreement for general legal services
13 with Demas Yan, the manager of the debtor." *See* ECF No. 32, Paragraphs 4 and 5.

14 10. The Attorney Disclosure Statement further provides:

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16 Neither myself nor any member of my office is an insider, has or holds any interests of
17 debtor's, is related to debtor in any way except as debtor's attorney, and otherwise has
18 no stake in debtor's assets or liabilities. Further, neither I nor any member of my staff is
19 related to debtor, its accountants or attorneys, except as debtors attorney, or to debtor's
20 creditors, their respective attorneys or accountants, or to the U.S. trustee, the trustee's
21 staff or members of its office, or any other party in interest.

22 *See* ECF No. 32, Paragraph 8.

23 11. The Employment Application did not provide any legal authority or argument in
24 support of its proposed terms, and did not include a copy of the fee agreement between the Firm
25 and Mr. Yan referenced in the Attorney Disclosure Statement. *See* ECF No. 31.

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12. Section 327(a) requires that professional persons seeking authorization to represent the bankruptcy estate be disinterested and prohibits such professionals from representing any interest adverse to the estate. *See* 11 U.S.C. § 327(a).

14. The Ninth Circuit applies the disclosure requirements of Rule 2014 “strictly.” *Neben & Starrett, Inc. v. Chartwell Financial Corp. (In re Park-Helena Corp.)*, 63 F.3d 877,881 (9th Cir. 1995). “[T]he disclosure rules are not discretionary.” *Mehdipour v. Marcus & Millichap (In re Mehdipour)*, 202 B.R. 474, 480 (B.A.P. 9th Cir. 1996); *see also In re Tevis*, 347 B.R. 679, 693-93 (B.A.P. 9th Cir. 2006). An attorney for a chapter 11 debtor has a mandatory, affirmative, and independent duty to make full and complete disclosure. 11 U.S.C §§ 327(a), 329 and Fed. R. Bankr. P. 2014. *In re Park-Helena Corp.*, 63 F.3d at 881; *In re Plaza Hotel Corp.*, 111 B.R. 882, 883 (Bankr. E.D. Cal. 1990) *aff’d* 123 B.R. 466, 1990 WL 212563 (B.A.P. 9th Cir. 1990) (unpublished opinion).

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1 16. Here, the Employment Application and Attorney Disclosure Statement fail to
2 comply with Section 327 and Rule 2014. The Attorney Disclosure Statement states that the Firm
3 has a “fee agreement for general legal services with Demas Yan, the manager of the debtor” rather
4 than the Debtor itself. *See* ECF No. 32, Paragraph 4. Because the proposed compensation
5 agreement creates a connection between the Firm, the Debtor, and Debtor’s manager, the Attorney
6 Disclosure Statement hints at a substantial, potential conflict of interest. The Attorney Disclosure
7 Statement fails to provide any further disclosures or details regarding the connections that would
8 permit the Court to conclude that no conflict exists. Additionally, the Employment Application
9 does not include a copy of the underlying fee agreement or explain how the compensation
10 arrangement is permissible under the Bankruptcy Code or the Federal Rules of Bankruptcy
11 Procedure.
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14 17. Consistent with Fed. R. Bankr. P. 2014, the Firm should make a complete
15 disclosure of all connections relevant to its employment, especially connections that relate to the
16 Firm’s compensation under any compensation agreements. *Cf. In Kobra Properties*, 406 B.R. at
17 402 (“[T]he fundamental procedural requirement is that the applicant make *full, candid, and*
18 *complete disclosure* of all of the professional’s connections with the debtor, creditors and any
19 other party in interest”) (emphasis added); *In re Shat*, 2009 WL 7809004, at *9 (B.A.P. 9th
20 Cir. Nov. 25, 2009) (“*[A]ll relevant facts* must be disclosed to the court in the employment
21 applications and Gellner’s verified statements, and it was improper for Gellner to disclose less to
22 the court than he did to the UST.”) (emphasis added).
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25 18. Due to the Firm’s failure to provide complete disclosures as required by the
26 Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the Employment Application
27 should be denied.
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1 **B. The Proposed Compensation Arrangement Does Not Comply With The Bankruptcy**
2 **Code and Federal Rules of Bankruptcy Procedure.**

3 19. Section 330(a)(1) allows “reasonable compensation for actual, necessary services”
4 to professional persons employed by the bankruptcy estate under Section 327. *Shalaby v.*
5 *Mansdorf (In re Nakhuda)*, 544 B.R. 886, 902-03 (B.A.P. 9th Cir. 2016); *Hale v. U.S. (In re*
6 *Basham)*, 208 B.R. 926, 931-932 (B.A.P. 9th Cir. 1997), *aff’d sub nom. In re Byrne*, 152 F.3d
7 924 (9th Cir. 1998).

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9 20. Section 330(a)(1) requires both notice and a hearing before the Court can award
10 fees to a debtor’s general bankruptcy counsel. *Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d
11 592, 60 (9th Cir. 2006); *see also* Fed. R. Bankr. P. 2002(a)(6); 3 Collier on Bankruptcy P. 330.08
12 [2][b][i] (16th 2023).

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14 21. Rule 2016(a) further requires any application for compensation to set forth a
15 detailed statement of: (1) the services rendered, time expended, and expenses incurred; and (2)
16 the amounts requested. The Northern District’s Guidelines for Compensation and Expense
17 Reimbursement of Professional and Trustees (“Compensation Guidelines”), made applicable by
18 B.L.R. 9029-1, similarly require that applications for compensation include a narrative of
19 services, billing summary, time records, and a certification of compliance with the Compensation
20 Guidelines. *See* Compensation Guidelines, *generally*.

21
22 22. The Employment Application seeks Court approval of a compensation structure
23 that violates Section 330, Rule 2016, or the Compensation Guidelines. Specifically, the
24 Employment Application and related Attorney Disclosure Statement indicate that Debtor’s
25 manager will be paying the Firm’s legal fees and expenses directly—without fee applications and
26 without Court approval. *See* ECFs No. 31 & 32 (“I do not have an agreement with the debtor for
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1 compensation, and I will not make any motion for attorney fee [sic] in this case.”) Therefore, the
2 Employment Application should be denied.

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4 **IV. CONCLUSION**

5 23. Based on the foregoing, the U.S. Trustee respectfully requests that the Court (i)
6 deny the Employment Application and (ii) grant such other relief as the Court deems appropriate
7 and just.

8 24. The U.S. Trustee reserves any and all rights, remedies and obligations to, *inter*
9 *alia*, complement, supplement, augment, alter and/or modify this objection, file an appropriate
10 motion and/or conduct any and all discovery as may be deemed necessary or as may be required
11 and to assert such other grounds as may become apparent upon further factual discovery.

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14 Dated: March 13, 2024

Respectfully submitted,

15 TRACY HOPE DAVIS
16 UNITED STATES TRUSTEE, REGION 17

17 By: /s/ Trevor R. Fehr
18 Trevor R. Fehr
19 Trial Attorney for United States Trustee
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